extend to the impalition of new of inftances, have, fees been afrliament ? Where was the necef. statutes, if the judges were emited authority? Here feem to be in the fame state, capable of the ual, they may clash, and interfere the one be subordinate to the othe power of the judges must be of the parliament, which is, and f subject to, it is controulable by arliament, we all know, is comd' branches, independent of, yet ntrouled by each other i no law by the joint confent of those three in case of disagreement between lation of fees, the power of the and supply the want of a law, then n, and authority of parliament in d useless, and nugatory. Suppose rs of one branch to be deeply inulation, that branch will probably if it can, an exerbitant provision her may think the provision conat, they disagree; the fee-bill misof the judges it now left at liberty or its acting is inlifted on, and they e very fees, which one branch of the dy condemned as unreasonable and the judges should hold their feats appose them strongly prejudiced in ent, might not abad administration, lubmitted to, obtain what establish. its officers ? Should the judges difion to favour the views of governl of the stubborn, and the putting compliant, would overcome that difaly secure to government for a time, hment of fees, but render that effaal. That a bold, and profligate mie the most barefaced, and shameful point, the creation of twelve peers in four of the occasion," is a memorable ent of fees by proclamation, I fill notwithstanding the subtile efforts of the contrary, to be an arbitrary, and confequently thus far fimilar to the ment: my Lord Coke's authority new offices erected with new feer, or w fees, are within this act ide tallaendo) that is, they are a talliage, or

that our offices relating to the aduffice were not old, and conflitutional: ed, that we have no old, and established ettled by proclamation, are new fees, uently they come within the act, and n of it; and therefore, as new fees are cannot be laid but by the legislature, ales heretofore mentioned; fees fettled branches thereof, are an unconstitugal tax. What Coke observes, lays comment on the statute (de tallagio ) " may be fully admitted, without se every settlement of fees is a tax;" fume, some settlement of fees is a tax, t of them, Antilon, is a tax? If fees parliament are taxes, why should they kes, when fettled by the discretionary dges? if when fettled by the latter aume not within the strict legal definition hey on that account less oppressive, or rous tendency? According to Antilon, saw fees are not to be annexed to old officer, the old and established fees are not to be altered but by all of parliament;" yet, in fees may be fettled." That is, if I comight, new fees may be established by the ecefary fervices, when there bappens to be vition made by law for these services interpretation of my Lord Coke's com-

conciled with his polition, that fees cand but by act of parliament, and with the lown in ad Bacon stready, recited? The proclamation, Antilon has faid, is dethe ordinary judicatories ; does it follow. t the measure is constitutional? On the the affefiment of thip money would have tional; for the legality of that too was in the ordinary judicatories, and it was mined to be legal by all the judges, four in that decision the parliament, and peo-ly acquiesced, proclamations at this day he force of laws, indeed would superfede

next argument in support of the proclathe judgment, or final decree, the colts of are fometimes wholly, fometimes partly the lawyers, and officers fees. If fees are axes can be laid by the legislature only, (admitting it for the fake of argument to ot justify the fettlement of fees by prociato is to be judge of the necessity? Is the then is its power unlimited. Who will ay, that the necessity is urgent, and invistinecessity only, can excute the violation of ental law; " The fubjects fall, not be taxed confert of their representatives in parliament.
y. is the fole foundation of the dangerous
f fettling fees by prerogative; when there stablishment of them by law, " ir behoves o advise the exercise of that power, not e that the necessity is indeed invincible, but as not been occasioned by any fault of their if it is not the one, the act is in no way, and if the other, that very necessity, the excuse of the act, will be the acculation who occasioned it, and in place of being "justifiable in their conduct, they muk be chargeable, "first, with the blame of the necessity, and next with the " danger of the violation of the law, as the drunken " man who commits murder jully bears the guilt both of inebration and bloodhed (F)." To whom is the blame of the supposed necessity, now plead as an excuse for acting againt law, imputable? Is it not to thole, who rather than Jubmit to a regulation by law of their fees, and to an apprehended diminution of income, chole to thelter themselves under the wings of arbitrary prerogative, and to expole their country toall the difficulties, and diffress, which the wanton exercife of an unconstitutional power was fure to intro-

Who, the least acquainted with the arguments in favour of thip-money, and the difpenfing power, does not perceive this part of Antilon's defence to be a repetition, and revival of those exploded, and justly oaious topics tricked off in a new drefs to hide their deformity, the better to impole on the unthinking and unwary. Antilon afferts, that the Citizen from fome proceedings of the house of commons, infers a power in the commons. " alone," to fettle the fees of officers belonging to the courts of law. Want of accuracy in the expression has, I confess, given a colour to the charge; but Antilon to justify his construction of the tentence referred to, and to exclude all doubt of the Citizen's meaning; has inferted the word " alone." " If the commons, fays the Citizen, bad a right to ex-44 quire into the abuses committed by the officers of the courts, " ibey bad, no doubt, the power of correcting those abuses " and of establishing the fees in those courts, bad they " thought proper"-he should have added (to prevent all cavil) -with the concurrence of the king and lords. This was really the Citizen's meaning, though not expressed; his whole argument should be considered, and taken together; he endeavours all along to prove, that fees are taxes, that taxes cannot be laid but by the legislature, except in the instances already mentioned, which, as I said before, are exceptions to the general rule. The extracts from the report of the committee were adduced to shew, what abuses had crept into practice by officers charging illegal, fees what oppressions the encroaching spirit of office had brought upon the subject; and the controlling power of the house of commons over the officers of the courts of justice. They resolved, that all the fees should be fixed, and established by authority, that they should be registered in a book, and inspected gratis, that the rates being publickly known, officers might not extort more than the ufual, ancient, legal, and estiblished fees. It does-not appear, that the commons authorised the judges to create new fees, or to alter, and increase the old, but insisted, that a table of all the fees should be made out under the inspection of the judges, and, to give it a greater fanction, should be tigned, and attetted by them, to prevent, no doubt, the fecret and rapacious practices of officers. That fees are taxes, I hope, has been proved; but should it be granted, that they are not taxes, because they have bren fettled in England by other authority, than the legislative (which I do not admit, if by a settlement of fees under the authority of the judges, an imposition of new fees be meant) ttill I contend, that a fettlement of fees in this province by proclamation is illegal, and unconstitutional, for the reasons already assigned; to which the following may be added. If a table of fees had been framed by the house of commons, confirmed by act of parliament, and all former statutes relating to fees had been repealed, and a temporary duration given to the new act, that at its expiration, corrections and amendments (if expedient) might be made in the table of fees, if in confequence of a disagreement between the branches of the legislature about those amendments, the law had expired, and the commons had resolved, that an attempt to establish the late rates by proclamation would be illegal, and unconflitutionwould any minister of Great Britain advise his sovereign, to issue his proclamation, under colour of preventing extortion, but in reality for the very purpole of establishing the contested rates? If a minister should be found during enough to adopt the measure, a dismission from office might not be his only punish. ment, although he thould endeavour to justify his conduct upon legal principles, in the following manner.

The same authority distinct from the leg slative, that has settled, may settle the see, when the proper occasion of exercising it occurs the proper occas now presented itself, we have no law for the establishmens of fees; fome standard is necessary, and therefore the authority distinct from the legislative, which ufed to fettle fees, must interfere, and fettle them again s necessity calls for its exertion, and it ought to be active; recourse, I allow, should not be had to its interposition, but in a case of the utmost urgency.

"Nec deus interfit nist dignus vindice nodus. "Nor let a god in person stand display'd, "Unless the labouring plot deserve his aid."

Such reasoning would not screen the minister from the resentment of the commons they would tell him, that the necessity, "The trant's plea," was pretended, not real, if real, that it was occasioned by his selfish riews, which prevented the pallage of a law, for the fettlement of fees; they would perhaps affert, that a power diffinct from the legislative, unless authorized by the latter, had never attempted to impose fees, since they began to be paid by the people; they might possibly shew, that a settlement of fees by the judges, does not imply an authority in them to impole new

(F) Queted from a pamphlet intitled " a freech against the superiding, and dispensive prerogative supposed to be written by my Lord Mansheld. Mr. Blackstone speaking of the very measure, which occasioned that speech, obferver ... A proclamation to lay an embargo in time of peace upon all weffels laden with wheat, (though in the prace upon an opplith scarcity) being contrary to law the madiffers of such a proclamation, and all persons acting under it seems it never fary to be indemnified by a special design of parliament, 7 Geo. 3d, C-7.

fees, if it should, that the power is unconstitutional, and ought to be refrained; they might contend that a fettlement of fees by the fudges, was nothing more than a publication under their hands, and feals of fuch fees, as had been usually, and of ancient time received by the officers of the courts; that the publication by authority was made, to prevent the rapacious practices of officers of they would probably refer the minister to my Lord Coke, who says expressly— that, while officers of could take no see at all for doing their office but of the King, then had they no colour to exact any thing of the fubject, who knew, that they ought to take nothing of, them, but when former acts of parliament, changing the rule of the common law gave to the ministers of the King, fees in some particular cases to be taken of the subject, " abuses crept in, and the officers and ministers did offend in most cases, but at this day, they can take no more for doing their office, than have been fince this act allowed to them by authority of parliament." (Westminster iff.)

But let us leave fiction, and come to reality; What will the delegates of the people at their next meeting fay to ear minister, this Antilon, this enemy to bis country, (G) this balhaw-who calls a centure of his mealures, arrogance, and freedom of speech, presumption?—They will probably tell him, you advised the proclamation, with you it was concerted in the cabinet, and by you bi aght into council; your artifices imposed on the board, and on the Governor, and drew them into an approbation of a febeme, outquardly pecious, and calculated to deceive; you bave fince detended it upon principles incompatible with the freedom, eate, and prosperity of the province. If your endeavours should prove successful, if the problamation should be enforced, we shall never have it in our power to correct the many glaring abuses, and excel-sive rates of the old table, adopted by the proclamation, nor to reduce the falaries of officers, which greatly overpay their fervices, and give an influence to government, usually converted to finister purposes, and of course repugnant to the general good

The monies collected from the people, and paid to officers, amount annually to a large fum; officers are dependent on, and of course attached to government; power is faid to follow property, the more, therefore, the property of officers is encreased, the greater the influence of government will be; fatal experience proves it already too great. The power of fettling fees by proclamation is utterly inconfiftent with the spirit of a free constitution 1 if the proclamation has a legal binding force, then will it undoubtedly take away a part of the people's property without their con-fent "Whatever another may rightfully take from me " without my consent, I have certainly no property in," (H)-if you render property thus insecure, you destroy the very life, and soul of liberty .- What is this power, or prerogative of fettling fees by proclamation, but the meer exertion of arbitrary will? If the supreme magistrate may lawfully settle sees by his fole authority, at one time, why may he not increase them at some other, according to his good will, and pleasure? (1) what boundary, what barrier shall we fix to this discretionary power? Would not the exercise of it, if submitted to, preclude the delegates of the people from interfering in any future fettlement of fees, from correcting sublisting abuses, and excelles, or from lowering the falaries of officers, when they become too lucrative !-It is imagined, the salaries of the commissary, and secretary, from the increase of business, will in process of time, exceed the appointments of the governor: does not this very circum-Rance point out the necessity of a reduction -But if the authority to regulate officers fees, with the concurrence of the other branches of the legislature, should be wrested from the lower house, What expectation can we ever have, of feeing this necessary re-

duction take place? "That questions ought not to be prejudged, says is another of the Citizen's objections" here again he wilfully misrepresents the Citizen's

The passage in the Citizen's last paper alluded to by Antilon is this—" The governor it is faid with the advice of his lordhip's council of flate, issued the proclamation: three of our provincial judges are " of that council, they therefore advised a measure,
" as proper, and consequently as legal, the legality of which, if called in question, they were afterwards "to determine; is not this in some degree prejudging the question?" Antilon talks of precedents, and established rules; the Citizen says not a word about them, his meaning is too plain to be mistaken, with-out defign. The council, it has been said, advised the proclamation, the judges therefore, who were then in council, and concurred in the advice, thought it a legal measure; the legality of it may hereafter be questioned; as judges of the provincial court, they may be concerned in the determination of the question;

(G) Poted so by the lower boule. Autilian seems to make very light of those resolves, a wicked minister is never at a loss to find out motives, to which he may be the the censure and condemnation of his conduct, these he will impute either to passion, to the disappointment of a faction, or to rancorous and personal enneity; bowever, if the proclamation is illegal, and of a dangerous tendency, the weter alluded to, so far from being justly imputable to any of these causes, ought to be deemed the result; and duty of real-patriotism. Antilon has compared the votes of a fermer lower house against certain religionists, to the late weter against the advisor of an unconstitutional measure. The unprejudiced ewill descern a wide difference between the two proceedings, but a review of the former would answer no good par-pose, it might perhaps rekindle extinguished animalities; of

pose, it might perhaps rekindle extinguished animakties of that transaction, therefore, I shall say us more than—
of Meminimus, et ignostimus;
or We remember, and forgive.

(H) Mollynius case of Ireland stated.

(I) Feel were aliably increased by Preclamatics in 1719 on the application of several surface.

Is there no impropriety in this proceeding? if they should determine the proclamation to be illegal, Will they not condemn their former opinion? wien they advised the proclamation, they, no doubt, judged it to be, not only "expedient," but legal 1 possibly, the decision of this connoversy may rest ultimately with of appeals; these gentlemen, it seems, unanimously concurred in advining the proclamation. "I be to the o to anticipate question) before they come to them through the their regular channel, to decide first, and hear after-(K) of the twelve countellors, lays Antilon, Two only were interelled, -Suppole a fuit to be brought before twelve-judges-two of whom are plaintiffs in the caule, and thele two fould it in judgment, and deliver their opinions, would not the judgment, if given in favour of the plaintiffs, be void on this principle, that no man ought to be judge in his oun taufe, such proceeding being contrary to reason and natural equity? Two counsellors only, it seems, were interested, that is immediately neerested? But might not others be Iwayed by a remote interest & Are the views of thinking men confined to the present hour? Are they not most commonly extended to distant prospects? If one of the interested counsellers, from his superior knowledge of the law, and constitution, and from the confidence reposed in his abilities, should have acquired an uncommon ascendant over the council, may we not rationally conclude, that his opinion would have great weight with these, who cannot be supposed equally good judges of the law, and constia tution? Supposing this interested counsellor to be an beneft man, ought not his opinion to have the greatest weight with meer laymen on a legal and conftitutional question? The proclamation has no relation to the chancellor, fays Antilon. Does not the chancellor continue to receive fees in his court according to the rates of the old table? Is not the governor chancellor, and bas not the proclamation fet up the very rates of the old table? How then can it be faid, that the proclamation has no relation to the chancellor? Should fome retractory person refuse to pay the chancellors fees, What methods would be taken to enforce the payment of them? The chancellor, I suppose, would decree his own fees to be paid; would he not there. fore be judge in his own cause? or if he should refuse to do the service, unless the fee were paid; at the in-Rant of performing it, Would not this be a very esfectual method of compelling payment?

Antilon's strictures in one of his notes on the Citizen's crude notions (L) of British polity fall intirely on another person, they are the notions of Montesquiett and of the writer of a pamphlet entitled, " of privileges of the assembly of Jamaica vindicated, co." and quoted as such. Notwithstanding the appeal from the court of chancery to a superior jurisdiction, the impropriety of having the offices of governor, and chancellor united in the fame perion, must be shvisas to every thinking man. " The proclamation was the act of the governor, flowing from " his persuasion of its utility; he was not to' be directed by the suffrage of the council, he was to " judge of the propriety of their advice, upon the realons they should offer; they were twelve in num-" ber" and no doubt each offered his reasons apart; all this may be very true, Antilon, and you may fill remain the principal adviser, the sole fabricator of the proclamation; Was the proclamation thought of, at one and the same instant, by all the twelve? Who first proposed it? If you did not first propose the meafure, did you not privately instigate the gentleman, who did propose it to the board, to make the motion? I know you of old; you never choose to appear openly the author of mischief, you have always fathered your is mischieveus tricks," on some one else-to these questions I would request your answer, and rest the truth of the accusation on your averment; but the averments of a " cankered" minister are not more to be relied on, than his promiles. I have charged, you fay, all the members of the council with being your implicit dependents; I deny the charge; I have faid, they were imposed on by your artifices; Is it the first time, that fenfible men have been outwitted by a knave? You are now trying to engage them on your fide, and to make them parties to your cause. To raise their resentment against the Citizen, you endeayour to persuade them, that they have been treated as cyphers, dependent tools, idiots, a meer rabble,

66 Nos numerus fumus, et fruges confumere nati." We are but cyphers, born to eat, and fleen

To draw the governor into your quarrel, you affert, that I have contradicted him in the groffelt manner; but, as usual, you have failed in your proof, "In his or proroguing speech he has declared, that he iffued this proclamation folely for the benefit of the peoet ple, by nine tenths of whom, he believed it was fo

(K) Whether any officer has been guilty of extortion,
it a quality, which neither your nor our declaration eight to prejudicate; but that your declarations held out to the publick would have, in no small degree, this effect, can hardly be doubted, and on our part particularly, fuch a declaration would be the more improper, the last es legal appeal in this province being to us; it would "through their regular channel, to decide first, and hear afterwards." Vide apper bouse message 2016 No.

thear afterwards. Vide upper boule meyage 2010 1002aember, 17/0:

(L) If the governor may lawfully iffue his proclamate matten for the efablishment of fees, and it frould receive a legal binding force from the decree of the chancellor, who in this province is governor, or from the determination of judges appointed by him, and removeable at his pleasure is Then may be behave with all the violence of an ecopprellor. The will to ordain, and the power to encountries the ladged in the lame person I I do not affere

oppressor. The will to ordain, and the power to enforce, will be lodged in the fame person; I do not affere
that the governor will all transmittedly, "but the trante liberty of the Julyed (as Blacksone justly observes) comit files and to much in the gratidus, behaviour, as in the Bo
"mittle govern this soveriles."